

OFF-RESERVATION ENVIRONMENTAL IMPACTS ORDINANCE
Of The Hoopa Valley Tribe

Title 64

ORDINANCE NO. 03-00

DATE APPROVED: July 20, 2000 and October 1, 2021

SUBJECT: Compact-required ordinance providing for the preparation, circulation and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts related to the construction, renovation, expansion of or modification to Class III gaming facilities.

WHEREAS: The Hoopa Valley Tribe (Tribe) adopted its Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, confirmed and ratified by the United States Congress in October 1988, in Public Law 100-580, the Hoopa-Yurok Settlement Act, and thereafter amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe pursuant to authority expressed in Article V Section 1 of the Constitution;

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and nonmembers of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribe and the State of California (State) entered into a tribal-state gaming compact pursuant to the Indian Gaming Regulatory Act of 1988 (25 U.S.C. § 2701 *et seq.*) in September, 1999;

WHEREAS: The voters of California approved Proposition 1A on March 7, 2000 thereby amending the California Constitution to authorize the scope of gaming contained in the tribal-state gaming compact;

WHEREAS: The Tribe and the State agreed to an amended Compact executed on September 10 and October 19, 2018 (Compact);

WHEREAS: The Compact, at section 11, requires the Tribe to adopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impact reports concerning potential off-reservation environmental and economic impacts of any Project, as defined in the Compact, and sets out requirements for the preparation of a tribally-commissioned environmental impact report (EIR) addressing mitigation of any significant effects on the off-reservation environment;

NOW, THEREFORE, BE IT RESOLVED THAT: the enactment of this Ordinance promotes the public health, safety and welfare and is in the public interest;

BE IT FURTHER RESOLVED THAT: the Tribal Council hereby adopts this Ordinance in order to comply with the requirements of the Compact to the extent those provisions are authorized by IGRA.

64.1. SHORT TITLE

This Ordinance shall be known and may be cited as the Off-Reservation Environmental Impacts Ordinance or Title 64.

64.2. SCOPE

This Ordinance shall only apply to the Hoopa Valley Tribe and shall be limited to Projects as defined herein.

64.3. PURPOSE

The purpose of this Ordinance is to comply with the requirements of the Compact. It is also the purpose of this Ordinance to provide a means to ensure that significant off-reservation environmental impacts caused by a Project commenced in relation to the Tribe's gaming operation, as defined herein, are identified and mitigated to the fullest extent possible.

64.4. DEFINITIONS

64.4.1. "Board of Supervisors" means the Humboldt County Board of Supervisors.

64.4.2. "Casino" means the Lucky Bear Casino or its successor.

64.4.3. "Class III gaming" means the forms of Class III gaming defined as such by IGRA as well as by any regulations of the National Indian Gaming Commission.

64.4.4. "Compact" means the tribal-state gaming compact between the Tribe and the State of California and any amendments thereto.

64.4.5. "Council" means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

64.4.6. "Environmental Impact Report" or "EIR" means any environmental assessment, environmental impact report or environmental impact statement, at the case may be.

64.4.7. "Gaming Activities" means Class III gaming activities as defined in IGRA, that are authorized under the Compact.

- 64.4.8. "Gaming Facility," as defined in the Compact, means any building in which Class III Gaming Activities or Gaming Operations occur, or in which the business records, receipts, or other funds of the Gaming Operation are maintained (but excluding offsite facilities primarily dedicated to the storage of those records, and financial institutions), and parking lots, walkways, rooms, buildings, including hotels, and areas that provide amenities to Gaming Activity patrons, if and only if the principal purpose of which is to serve the activities of the Gaming Operation.
- 64.4.9. "Gaming Operation," means the business enterprise that offers and operates Class III gaming activities, whether exclusively or otherwise.
- 64.4.10. "IGRA" means the Indian Gaming Regulatory Act of 1988 (25 U.S.C. § 2701 et seq.), any amendments thereto and all regulations promulgated thereunder.
- 64.4.11. "Interested Persons" means (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, (ii) any incorporated city within ten (10) miles of the Project, and (iii) persons, groups, or agencies that request in writing a notice of preparation of a draft tribal environmental impact report, or have commented on the Project in writing to the Tribe or Humboldt County.
- 64.4.12. "Off-Reservation" means outside the exterior boundaries of the Hoopa Valley Indian Reservation and as hereafter constituted and within six (6) miles of the exterior boundaries of the Reservation.
- 64.4.13. "Project," as defined by Compact, section 2.21, means (i) the construction of a new Gaming Facility, or (ii) renovation, expansion, or modification of an existing Gaming Facility, or (iii) other activity involving a physical change to the reservation environment, provided the principal purpose of which is directly related to the activities of the Gaming Operation, and any one of which may cause a Significant Effect on the Off-Reservation Environment.
- 64.4.14. "Reservation" means the Hoopa Valley Indian Reservation, and as hereafter constituted, including lands otherwise held in trust for the Tribe by the United States.
- 64.4.15. "Significant Effect to the Off-Reservation Environment," means the same as "Significant Effect(s) on the Environment" and means a substantial or potentially substantial adverse change in any of the physical conditions within the area affected by the Project including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance. As provided by Compact, section 2.21, a Significant effect on the Off-Reservation Environment occurs if any of the following conditions exist:

- (a) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or achieve short-term, to the disadvantage of long-term, environmental goals.
- (b) The possible effects of a Project on the off-reservation environment are individually limited but cumulatively considerable. ("Cumulatively considerable" means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)
- (c) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

64.4.16. "State" as defined in the Compact, means the State of California or an authorized official or agency thereof designated by the Compact or by the Governor of the State of California.

64.4.17. "Tribe" means the Hoopa Valley Tribe, its departments and entities, including the Lucky Bear Casino.

64.5. SIGNIFICANT ENVIRONMENTAL IMPACT DETERMINATION

In the exercise of sovereignty and in accordance with Compact, section 11(c), and the terms of this Ordinance, the Tribe shall be the lead agency for purposes of making determinations regarding the environmental impacts of proposed Projects, assessing environmental impacts, conducting consultation, if any, issuing findings, conducting and certifying environmental evaluations, and selecting alternatives and mitigation measures necessary to implement the policies and procedures set forth in this Ordinance.

The policies and purposes of the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) consistent with the Tribe's governmental interests shall be the basis for this evaluation. The procedures for tribal review of the potential off-reservation environmental impacts of Projects are as follows.

64.6. INITIAL ENVIRONMENTAL ASSESSMENT

For every proposed Project, an initial environmental assessment shall be conducted either by the Tribe itself, using its own Tribal Environmental Agency staff and resources (TEPA), or by a consultant engaged under contract with the Tribe (consultant). The Tribe shall take appropriate action to initially determine whether a proposed Project will have a Significant Effect on the Off-Reservation Environment. Appropriate action requires consideration of the factors identified in the environmental checklist attached to the Compact as Appendix B (Environmental Checklist). This assessment also includes consideration of all phases of project planning, implementation

and operation. In addition, the Tribe may consult with the Gaming Operation or other entity responsible for managing the Project to determine if the proposed Project may be revised to avoid or reduce any environmental impacts.

64.6.1. Findings Regarding Significant Effects on the Off-Reservation Environment.

64.6.1.1. Negative Declaration. Based on an environmental evaluation, the Tribe may issue a Negative Declaration (also referred to as a Finding of No Significant Impact or FONSI), if the Tribe determines the Project will not result in a Significant Effect on the Off-Reservation Environment or there is substantial evidence that any Significant Effect on the Off-Reservation Environment identified in the environmental assessment would be avoided or mitigated by revision(s) to the Project.

64.6.1.1.1. A Negative Declaration may be made based on an existing Environmental Impact Report prepared for an earlier Project.

64.6.1.1.2. Notice of Negative Declaration. Within 30 days of any decision supporting a Negative Declaration, the Tribe shall notify the State of any Negative Declaration and provide supporting documentation concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the Humboldt County Board of Supervisors.

64.6.2. Environmental Impact Report. Alternatively, if the environmental evaluation reveals the potential for a Significant Effect on the Off-Reservation Environment, the Tribe shall prepare an environmental impact report (EIR) in accordance with the following procedures.

64.7. PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

Upon a determination that a Project may have a Significant Effect on the Off-Reservation Environment, the Tribe, through the TEPA or a consultant, shall cause the preparation of a draft EIR.

64.7.1. Each EIR shall go through both a draft and final stage. A draft EIR shall serve as the basis for public review and consultation between the Humboldt County Board of Supervisors and the Tribe. A final EIR is the document memorializing the Tribe's assessment of potential Significant Impacts on the Off-Reservation Environment and decisions regarding mitigation measures.

64.7.2. Contents of an Environmental Impact Report.

An EIR shall provide detailed information, as described in Compact, section 11.1, about the Significant Effect(s) on the Off-Reservation Environment, and include the following:

- (a) A table of contents;
- (b) A project summary;
- (c) A detailed description of the project;
- (d) A description of the local and regional off-reservation environment in the vicinity of the Project as it exists before commencement of the Project;
- (e) A description of the potential significant off-reservation environmental impacts of the Project, including a discussion of indirect and direct, significant, adverse effects and a comparison of existing physical conditions to the potential post-project physical conditions;
- (f) A description of mitigation measures for consideration;
- (g) A description of a range of reasonable alternatives to the Project which could feasibly achieve the basic objectives of the Project, including the "no Project" alternative; and
- (h) A discussion of any cumulative impacts which may compound or increase other off-reservation environmental impacts.
- (i) In a final EIR, comments received through the review process and the Tribe's responses to those comments.

64.8. NOTICE OF PROJECT AND DRAFT ENVIRONMENTAL IMPACT REPORT

Upon commencing the preparation of the draft EIR, the Tribe shall send a notice of preparation to the State Clearinghouse in the State Office of Planning and Research (State Clearinghouse) and to Humboldt County Board of Supervisors for distribution to the public. The Tribe shall post the notice of preparation of the draft EIR on the Tribe's website. In addition, the Tribe will make copies available for public inspection at the Tribe's Neighborhood Facilities Building and at such other on and off-reservation locations as may be appropriate based on the nature of the Project.

The notice of preparation of the draft EIR is to provide all Interested Persons with information describing the Project and its potential Significant Effects on the Off-Reservation Environment sufficient to enable a meaningful response or comment. In addition, the notice shall include:

- (a) The proposed location of the Project shown on topographical as well as regional maps;

- (b) The probable off-reservation environmental effects of the Project;
- (c) A statement that Interested Persons have the opportunity to provide comments to the Tribe within forty-five (45) days of the date of the receipt of the notice of preparation by the State Clearinghouse and Humboldt County; and
- (d) A request that Interested Persons identify, in their comments, any off-reservation environmental issues and reasonable mitigation measures the Tribe should consider in its evaluation of the Project.

64.9. NOTICE OF COMPLETION OF DRAFT ENVIRONMENTAL IMPACT REPORT

In a timely manner, the Tribe shall file a copy of the draft EIR and a notice of completion with the State Clearinghouse, the State Gaming Agency, and the California Department of Justice, Office of the Attorney General. The notice of completion shall include the following:

- (a) A brief description of the Project;
- (b) The proposed location of the Project;
- (c) An address where copies of the draft EIR are available; and
- (d) Notice of a period of forty-five (45) days during which comments on the draft EIR may be submitted to the Tribe.

The Tribe will submit ten (10) copies each of the draft EIR and the notice of completion to Humboldt County, which will be asked to post public notice of the draft EIR at the office of the County Board of Supervisors and to furnish the notice of completion and a copy of the draft EIR to the public libraries serving the County. As an alternative to receiving paper copies, the Tribe and the County may agree that a single electronic copy of the draft EIR and the notice of completion may be submitted by the Tribe to the County.

In addition, the Tribe will provide public notice of completion through the following methods:

- (a) Publication on the Tribe's website;
- (b) Publication at least one (1) time by the Tribe in a newspaper of general circulation in the area affected by the Project;
- (c) If more than one (1) area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas; and
- (d) Direct mail to the owners and occupants of property adjacent to, but outside, the Indian lands on which the Project is to be located. Owners of

such property shall be identified as shown on the latest equalization assessment roll.

64.10. CONSULTATION WITH INTERESTED PARTIES

Before finalizing the EIR, the Tribe or the consultant shall consult with and solicit comments from any federal, state, or local governmental agency, which has jurisdiction by law or special expertise with respect to any potentially involved environmental impact. At a minimum the Tribe or consultant must submit copies of all EIRs concerning a proposed project to the State Clearinghouse in the Office of Planning and Research, and the Humboldt County Board of Supervisors for distribution to the public. Additionally, the Tribe or the consultant will make such copies available for public inspection at the Tribe's Neighborhood Facilities Building on the Reservation and at such other on and off-reservation locations as may be appropriate based on the nature of the Project.

The Tribal Council or its consultant shall, if requested by the Humboldt County Board of Supervisors, meet to discuss mitigation of Significant Effects on the Off-Reservation Environment.

64.11. PUBLIC HEARING

The Tribal Council or its consultant shall conduct at least one (1) public hearing at least thirty (30) days prior to commencement of the Project to provide an opportunity to members of the public residing off-Reservation to make oral statements regarding a negative declaration or EIR.

In advance of the public hearing, either the Tribe or the consultant shall submit the draft EIR to the Tribal Council along with any written comments received for the consultation described above. The Tribal Council will select a time and place on the Reservation for one public hearing on the Project and will cause either its staff, the TEPA or the consultant to publish notice, as described in section 64.9, of the time, place, and nature of this hearing.

At the public hearing, the Tribe or the consultant shall make a presentation regarding the assessment documented in the draft EIR as well as a summary of all written comments received. In addition, the Tribal Council will permit, subject to reasonable limitations, interested members of the public and affected agencies of the federal, state, or local government to present their views and comments on both the proposed Project itself and the draft EIR.

In its discretion, if the Tribal Council believes that further study, information or hearings are desirable, it may direct the preparation of such additional study, information or hearings.

64.11.1. Tribal Council Decision. When the Tribal Council is satisfied that it is fully informed regarding relevant issues related to the draft EIR, the written comments received on the draft EIR, or hearings which it may have elected to conduct, the Tribal Council will analyze all relevant facts and decide whether to:

- (a) Issue a finding of no significant impact and proceed with the Project;

- (b) Direct either Tribal staff or the engaged consultant to consolidate all comments and views of both affected governmental agencies and the public on the draft EIR, with appropriate responses to all new information and submit the consolidated final EIR to the Tribal Council after which the Tribal Council will perform its analysis;
- (c) Accept the draft EIR as the final EIR and proceed with the Project but subject to a good-faith effort to implement conditions or mitigation measures the Tribal Council accepts or adopts.
- (d) Accept the draft EIR but not proceed with the Project.
- (e) Reject the draft EIR and not proceed with the Project;

64.11.2. Tribal Council Resolution. The Tribal Council's decision at the public hearing shall be memorialized in the form of a written resolution which, together with all supporting documentation and information, shall constitute the Tribe's record of decision for the Project. Any resolution by which the Tribal Council proceeds with a Project shall also include a finding requiring good-faith effort to be made to implement mitigation measures.

64.12. MITIGATION OF SIGNIFICANT ADVERSE OFF-RESERVATION IMPACTS

In accordance with the Compact, section 11.4(e), a Project may proceed only if such a determination is supported by substantial evidence and there is agreement with Humboldt County that the impacts to the off-reservation community have been balanced with appropriate and commensurate benefits to the off-reservation community. Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinions supported by facts.

The Tribal Council shall not approve a Project for which an EIR has identified one or more significant environmental impacts, unless the Tribal Council makes one or more of the following written findings supported by substantial evidence in the record:

- 64.12.1. Changes have been required in the Project which avoid or substantially lessen the Significant Effects on the Off-Reservation Environment identified in the EIR;
- 64.12.2. Such changes are within the responsibility and jurisdiction of the State of California or other local government agency which can and should require them and are not within the jurisdiction of the Tribe;
- 64.12.3. Specific economic, social or other considerations make infeasible the mitigation measures or Project alternatives identified in the final EIR; or
- 64.12.4. The benefits of the Project outweigh unavoidable adverse environmental effects.

64.13. ISSUANCE OF FINAL ENVIRONMENTAL IMPACT REPORT

The Tribe shall prepare, certify and make the final EIR available to Humboldt County, the State Clearinghouse, the State Gaming Agency, and the California Department of Justice, Office of the Attorney General (and, in the event potentially significant traffic impacts are identified in the final EIR, to the California Department of Transportation) before the completion of negotiations with the County conducted pursuant to Compact section 11.6 [promptly but no later than thirty (30) days before the commencement of a Project]. The final EIR shall consist of:

- (a) The draft EIR or a revision of the draft;
- (b) Comments and recommendations received on the draft EIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies commenting on the draft EIR;
- (d) The responses of the Tribe to significant environmental points raised in the review and consultation process, reflecting the Tribe's good faith, reasoned analysis and consideration of each substantive comment bearing on any off-reservation environmental impact; and
- (e) In the event the Tribe has determined that specific economic, legal, social, technological, or other considerations, including the legitimate needs of the Tribe to generate revenue to provide essential programs and services to its members, make infeasible the mitigation of Significant Effects on the Off-Reservation Environment, the final EIR shall identify the specific overriding economic, legal, social, technological or other consideration(s) supporting approval of the Project based on substantial evidence in the EIR.

64.14. PROGRESS UPDATES

During the duration of the Project, the Tribe shall orally or in writing, including but not limited to publication in the Tribal newspaper, if any, and one local newspaper of general circulation in the vicinity of the Reservation and approximately every three (3) months until completion of the Project, generally inform the Humboldt County Board of Supervisors and public of the Project's progress. Failure to inform the Board of Supervisors and public of the progress of a Project shall not be ground for issuance of a peremptory writ of mandate or otherwise create jurisdiction in the Tribal Court.

64.15. REVIEW OF ORDINANCE WITH STATE

The Tribe and State may from time to time, meet to review this Ordinance, the Tribe's compliance herewith and Section 11 of the Compact to ensure Significant Effects on the Off-Reservation Environment resulting from Projects undertaken by the Tribe may be avoided or mitigated.

64.16. TRIBAL COURT JURISDICTION

64.16.1. Exhaustion of Administrative Remedies

To be entitled to seek judicial review of Tribal Council action for alleged violations of this Ordinance, aggrieved parties must first exhaust their administrative remedies by presenting their specific objections to the Tribal Council at the time of the public hearing. If this is not done, then the Tribal Court must deny any relief requested for lack of jurisdiction.

64.16.2. Statute of Limitations:

- (a) 30 days after the filing and posting of the Notice of a Negative Declaration or Notice of Preparation or Certification of an EIR; OR
- (b) 45 days after either:
 - a. the Tribal Council's determination to carry out or approve a Project; or
 - b. commencement of a Project, if the Project is undertaken without a formal decision by the Tribal Council.

64.16.3. Pre-Notice Filing

The plaintiff in an action under this Ordinance shall serve a notice of intent to commence action upon the Tribal Council at least 20 days prior to filing the action. Said notice shall be considered an administrative remedy pursuant to 64.11.1, above.

64.16.4. Exclusive Jurisdiction

The Tribal Courts shall have exclusive jurisdiction to adjudicate actions commenced pursuant to this Ordinance.

64.16.5. Remedies

If after a trial, hearing or remand from an appellate court, a trial court finds that the Tribal Council has violated this Ordinance, the court will issue a peremptory writ of mandate requiring one or more of the following:

- (a) That the Tribal Council's decision be voided;
- (b) That the Tribal Council or the real party in interest suspend all activity pursuant to the decision that could alter the off-reservation environment until the Tribal Council takes steps to comply with this Ordinance; and/or
- (c) That the Tribal Council take specific action to cause the decision to comply with this Ordinance.

64.16.5.1. The Tribal Court shall retain jurisdiction over the matter until it has determined that the Tribal Council has adequately complied with this Ordinance, provided that the Tribal Court cannot direct the Tribal Council to exercise its jurisdiction in any particular way.

64.16.5.2. The Tribal Court is not authorized to, and shall not, award attorney's fees or monetary damages as against the Tribe for violations of this Ordinance.

64.17. EFFECTIVE DATE; AMENDMENT

This Ordinance shall take effect upon its adoption by the Tribal Council. This Ordinance may be amended as provided in accordance with the Legislative Procedures Act.

64.18. SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall remain in full force and effect to the maximum extent possible.

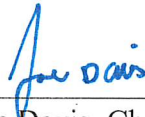
64.19. SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hoopa Valley Tribe or any of its enterprises, officers, agents, or employees, except to the extent provided for herein. Nothing herein shall authorize the award of monetary damages, attorney's fees or punitive damages as against the Hoopa Valley Tribe or any of its enterprises, officers, agents or employees.

CERTIFICATION

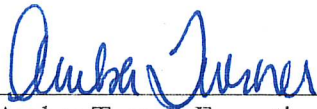
I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members, of which seven (7) were poll voted, constituting a quorum and held this 29th day of September 2021 and approved this 1st day of October 2021 thereof; and was reaffirmed at a Regular Meeting held October 7, 2021; and this Ordinance was duly adopted under the Emergency LPA process, Title 6 of the Hoopa Valley Tribe. The Hoopa Valley Tribe composed of eight (8) members, of which seven (7) were present, constituting a quorum at a Regular Meeting thereof, duly and regularly called, noticed, convened and held this 4th day of November 2021; and final approval occurred and this Ordinance was duly adopted by a vote of six (6) in favor with zero (0) opposed and zero(0) abstaining, and that said Ordinance has not been rescinded or amended in any way.

Dated this fourth day of November 2021.



Joe Davis, Chairman
Hoopa Valley Tribal Council

Attest:



Amber Turner, Executive Secretary
Hoopa Valley Tribal Council